

REMARKS/ARGUMENTS

Claims 1-25 remain in the application.

Claims 1, 9, 12, 14, 18 and 23 are currently amended.

Claim Rejections Under 35 USC § 103

- 5 **Claims 1-17 were rejected under 35 USC § 103(a) over US Patent 2,684,822 to Odin in view of US Patent 6,631,877 to Crain, et al.**

The invention as originally presented is patentable over both Odin and Crain, individually and in combination.

10 Odin teaches a tripod supporting structure having a head 1 supported by three lockable telescoping legs 3a, 3b, 3c. Column 2, line 50-column 3, line 6. Each telescoping leg 3a, 3b, 3c is connected to the head 1 by a "flexible leg member 6." Column 3, lines 7-9. Each flexible leg "member 6 comprises a helical spring member 7 constructed of spring steel stock which is circular in cross section, over which is wound a secondary winding 8 of soft iron wire which is more or less oval in cross section." Column 3, lines 9-14.

15 Crain teaches a portable support in the form of a tripod 10 having a head 12 and three legs 14 connected to the head 12. Each leg 14 includes a fixed leg member 16, a telescoping leg member 18 and feet 20 with points 22 to help secure the tripod 10 in place. Column 5, lines 6-36.

20 The fixed leg member 16 of each leg 14 comprises a pair of rods 28 located on opposite sides of the telescoping leg member 18. "[T]he rods 28 and the telescoping leg member 18 are extruded (more specifically, "pultruded") from fiberglass or a similar material. Fiberglass has desirable properties of being resistant to warping and plastic deformation, which are detrimental to the precision of the tripod 10." Column 5, lines 37-50.

25 The present invention presently recited in amended claim 1 is a mounting bracket having a plurality of permanently bendable continuous solid material support rods each comprising opposing first and second end portions.

In contrast, Odin teaches telescoping legs 3a, 3b, 3c each having a "flexible leg member 6." Column 3, lines 7-9. However, the flexible leg member 6 of Odin is only a helical spring member 7 over which is wound a secondary winding 8 of soft iron wire. Column 3, lines 9-14. The spring 7 and

wire winding 8 of Odin clearly fail to disclose or suggest the “permanently bendable continuous solid material support rods” presently recited in claim 1.

Rather, in clear contrast to the “permanently bendable continuous solid material support rods” of the present invention, the flexible leg member 6 of Odin is not “continuous” nor “solid” material, as recited in claim 1. The helical spring member 7 portion and wire winding 8 of flexible leg member 6 of Odin cannot disclose or suggest a rod of “continuous solid material,” as recited in claim 1. The helical spring member 7 may be of “continuous solid material,” and the wire winding 8 may be of “continuous solid material,” but they are combined in the flexible leg member 6 of Odin which is not “continuous” nor “solid” material, as recited in claim 1.

Thus, Odin fails to disclose or suggest the “permanently bendable continuous solid material support rods” of the present invention, as recited in claim 1.

Crain is an improper reference. The proposed modification cannot render the prior art unsatisfactory for its intended purpose. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Here, Crain cannot be combined with Odin because the tripod supporting structure of Odin requires “flexible leg member 6.” See, e.g., column 1, lines 5-12, wherein Odin teaches that the tripod “has among its objects, the production of a structure in which the camera or other objects supported, may be readily manipulated or adjusted in any desired angle or position.” Thus, Odin requires leg members 6 to be “flexible.”

In contrast, Crain teaches “a support for surveying equipment which provides a stable and rigid platform for high precision surveying equipment.” Column 2, lines 15-19. Therefore, Crain teaches only fixed leg members 16 being comprised of a pair of rods 28 and a telescoping leg member 18, with the rods 28 and the telescoping leg member 18 being extruded or “pultruded” from “fiberglass or a similar material that has desirable properties of being resistant to warping and plastic deformation, which are detrimental to the precision of the tripod 10.” Column 5, lines 37-50.

Thus, the leg members 16 of Crain that are “resistant to warping and plastic deformation” cannot be substituted for the “flexible leg member 6” of Odin because the combination would render

the invention of Odin unsatisfactory for its intended purpose of being readily manipulated or adjusted in any desired angle or position." See, e.g., column 1, lines 5-12.

Crain fails to provide the deficiencies of Odin. Even if Crain was a proper reference, which it is not, Crain fails to provide the deficiencies of Odin. Crain fails to disclose or suggest the

5 "permanently bendable continuous solid material support rods" of the present invention. Rather, in contrast to the present invention, the rods 28 and the telescoping leg member 18 of the fixed leg member 16 of each leg 14 as taught by Crane are "extruded ... from fiberglass or a similar material" to be "resistant to warping and plastic deformation." Column 5, lines 37-50. Thus, Crain teaches away from the support rods of present invention being "bendable," as originally recited in
10 claim 1 at least because Crain teaches only legs being "resistant to warping and plastic deformation." In other words, Crain teaches only legs that are resistant to being "bendable."

For at least the above reasons, the invention as presently recited in claim 1 is believed to be allowable over both Odin and Crain, individually and in combination.

Claims 1-8 are allowable at least as depending from allowable claim 1.

15 Amended claim 9 differs in scope from allowable claim 1. However, the above arguments and reasons for allowance directed to claim 1 are sufficiently applicable to claim 9 as to make repetition unnecessary. Thus, for each of the reasons above, claim 9 is believed to be allowable over the cited art.

Claims 10-17 are allowable at least as depending from allowable claim 9.

20 Dependent claim 12 is further allowable independently of allowable base claim 9 as reciting the bendable support rods being "formed of a metal selected from the group of metals consisting of: steel, copper, permanently bendable copper alloys, aluminum, and permanently bendable aluminum alloys."

25 The Office Action argued that it would have been obvious at the time the invention was made to have utilized a known metal such as aluminum as a matter of design preference.

The Applicant disagrees.

The courts have decided that substitution of material was obvious only if the device had been made of the same category of material prior to the invention. *In re Leshin*, 125 USPQ 416. The court in *In re Leshin* held that selection of a known plastic to make a container of a type

made of plastics prior to the invention was obvious, but the court required the container to be of a type made of plastics prior to the invention. *In re Leshin*, 125 USPQ 416.

Here, in contrast to the container in *Leshin*, the flexible leg member 6 of Odin is limited to a type that uses a combination of a helical spring member 7 constructed of spring steel stock over
5 which is wound a secondary winding 8 of soft iron wire. Column 3, lines 9-14. The rods 28 and the telescoping leg member 18 of Crain are limited to “fiberglass or a similar material that has desirable properties of being resistant to warping and plastic deformation, which are detrimental to the precision of the tripod 10.” Column 5, lines 37-50.

In contrast, the present invention as recited in claim 12 is limited to a group of
10 “permanently bendable metals.” It is well known that the spring steel stock and iron wire of Odin are not “bendable” by nature, at least not within the context of the present invention. Additionally, the “fiberglass or a similar material” of Crain are selected because they are “resistant to warping and plastic deformation,” i.e., because they are not “bendable.”

Thus, the choice of material here is not an obvious substitution of material at least because
15 the choice requires the material to be limited to a group of “permanently bendable metals” to be satisfactory for its intended purpose.

For at least the above reasons, claim 12 is believed to be allowable independently of allowable base claim 9.

Dependent claim 13 is further allowable independently of allowable base claim 9 and
20 intervening claim 12 as reciting the bendable support rods being “formed of a permanently bendable aluminum or aluminum alloy having a substantially constant diameter in the range of 1/4 inch to 1 inch.”

Thus, claim 13 further limits the scope of the material to “a permanently bendable aluminum or aluminum alloy” such that the arguments and reasons for allowance directed to claim
25 12 are sufficiently applicable to claim 13 as to make repetition unnecessary. Thus, for each of the reasons above, claim 13 is believed to be allowable over the cited art.

In fact, the “permanently bendable aluminum or aluminum alloy” recited in claim 13 is clearly unsatisfactory for either the helical spring member 7 constructed of spring steel stock, or the secondary winding 8 of soft iron wire, as taught by Odin. The “permanently bendable aluminum or
30 aluminum alloy” recited in claim 13 is also clearly unsatisfactory for either the fiberglass rods 28

or the fiberglass telescoping leg member 18 of Crain which both need to be “resistant to warping and plastic deformation, which are detrimental to the precision of the tripod 10.” Column 5, lines 37-50.

Furthermore, claim 13 further limits the rods to “a substantially constant diameter in the
5 range of 1/4 inch to 1 inch.”

The Office Action argued that it would have been obvious at the time the invention was made to have utilized a specific diameter of the rods as a matter of design preference.

The Applicant disagrees.

The courts have decided that differences in size, shape, or relative dimension may be
10 patentable if a device having the claimed relative dimensions does perform differently than the prior art device. Please see, MPEP § 2144 (IV).

The Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed
15 device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984)(emphasis added).

Thus, the limit on patentability requires both (1) recitation of relative dimensions, and (2) that a device having the claimed relative dimensions would not perform differently than the prior
20 art device. This is clearly not the situation in the instant application. Rather, as explained in the Specification, the diameter in the range of 1/4 inch to 1 inch are critical for being “permanently bendable” within the context of the claimed invention.

Therefore, the rule of *Gardner v. TEC Systems, Inc.* does not apply to the present invention because here, in contrast to *Gardner*, a device having the claimed relative dimensions
25 does perform differently than the prior art device.

Thus, the choice of diameter here is not an obvious choice at least because the choice requires the material to be limited to a diameter in the range of 1/4 inch to 1 inch to be satisfactory for its intended purpose.

For at least the above reasons, claim 13 is believed to be allowable independently of
30 allowable base claim 9 and intervening claim 12.

Claims 16 and 18-24 were rejected under 35 USC § 103(a) over US Patent 2,684,822 to Odin in view of US Patent 6,631,877 to Crain, et al. and further in view of US Patent 6,685,385 to Ledingham.

Claim 16 is allowable at least as depending from allowable base claim 9, as discussed
5 above.

Amended claim 18 differs in scope from allowable claims 1 and 9. However, the above arguments and reasons for allowance directed to claims 1 and 9 are sufficiently applicable to claim 18 as to make repetition unnecessary. Thus, for each of the reasons above, claim 18 is believed to be allowable over the cited art.

10 Claims 19-24 are allowable at least as depending from allowable claim 18.

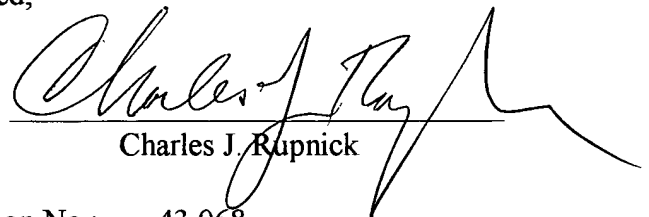
The Office Action cited no basis for rejecting claim 25. Claim 25 is believed to be allowable at least as depending from allowable base claim 9, as discussed above.

The claims now being in form for allowance, reconsideration and allowance is respectfully
15 requested.

If the Examiner has questions or wishes to discuss any aspect of the case, the Examiner is encouraged to contact the undersigned at the telephone number given below.

Respectfully submitted,

20 Attorney:



Charles J. Rupnick

25 Registration No.: 43,068
Date: November 29, 2005
Post Office Address: PO Box 46752
Seattle, WA 98146
Telephone: (206) 439-7956
Facsimile: (206) 439-3223